

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6655

Investigation into tariff filing of Vermont)
Electric Cooperative, Inc., re: Revisions to its)
Pole Attachment Tariff)

Order entered: 10/9/2002

I. INTRODUCTION

The Public Service Board ("Board") opened this docket on March 20, 2002, to investigate the proposed pole attachment tariff of Vermont Electric Cooperative, Inc. ("VEC"). The Board permitted the tariff to become effective on March 18, 2002, subject to the Board's investigation under the Board's revised Rule 3.700, *et seq.*, which became effective on September 1, 2001. Under Rule 3.711, new pole rental rates were to become effective as of January 1, 2002. Based on the evidence presented in this Docket and on the stipulation of the parties, I conclude that the per-foot pole rental rates, as well as the non-price terms and conditions, proposed by the parties are just and reasonable. In support of that conclusion, I adopt the terms and conditions and the substance of the findings contained in a stipulation dated August 15, 2002, between VEC and the Vermont Department of Public Service ("Department" or "DPS") ("Stipulation"). Therefore, I recommend that the Board issue a final order approving the stipulation, and close this investigation.

II. PROCEDURAL HISTORY

On March 20, 2002, the Board opened an investigation into VEC's pole attachment tariff pursuant to 30 V.S.A. §§ 225 and 227, and appointed me as Hearing Officer.¹ I convened a prehearing conference in this matter on March 26, 2002. VEC was represented by Michael L. Burak, Esq., of Burak Anderson & Melloni, PLC, and John J. Cotter, Esq., appeared on behalf of

1. Docket 6655, Order of 3/20/02.

the Department. On April 30, 2002, pursuant to an agreed-upon procedural schedule, VEC submitted prefiled direct testimony in support of its proposed pole attachment tariff. Following the submission of VEC's prefiled testimony, the Department issued discovery requests to VEC and VEC responded to those requests. On June 3, 2002, the Department filed the testimony of Charles F. Larkin, Telecommunications Engineer for the Department. Technical hearings were to take place the week of July 24th. However, by letter dated June 7, 2002, and again by letter dated July 3, 2002, the parties informed the Hearing Officer that they were making progress in settlement negotiations and requested that the hearings be stayed to allow time to attempt to reach full settlement of the Docket.

III. STIPULATION

On August 19, 2002, VEC and the Department filed a Stipulation that addresses all issues raised in this proceeding, and asked the Board to adopt the Stipulation in its entirety and to close the Docket. In the Stipulation, VEC and the Department agree upon a specified per-foot rate and all non-rental terms and conditions for attaching to VEC's poles, and agree that the proposed per-foot rate and other terms and conditions are just and reasonable and consistent with Rule 3.700. A proposed Board Order is attached to the Stipulation. The parties further agree that VEC would implement the stipulated per-foot rates for its next bills after entry of a final Board order adopting the Stipulation, and that VEC would change its billing procedures from billing in arrears to billing in advance. All charges for attachment from January 1, 2002, forward are to be based on the agreed-upon rates. By the Stipulation, the parties further agreed to waive their rights under 3 V.S.A. § 811 to file exceptions and briefs, and present oral argument, in the event the Hearing Officer issues a Proposal for Decision substantially in the form attached to the Stipulation.

IV. FINDINGS

Based upon the evidence of record, I submit the following findings to the Board in accordance with 30 V.S.A. § 8.

1. By Order dated March 20, 2002, the Board allowed to become effective as of March 18, 2002, but subject to investigation, the proposed pole attachment tariff filed by VEC on

February 1, 2002. Docket 6655, Order of 3/20/02.

2. On April 26, 2002, VEC filed the prefiled testimony of Linda Reeves along with supporting documentation for the rates proposed in the amended tariff. The rate proposed by VEC was \$10.25 per foot of attachment. The tariff assigned one foot of occupied space to cable television operators not also providing local exchange service and two feet to all other attaching entities except for Incumbent Local Exchange Companies ("ILECs") and electric utilities, and those attaching entities for which VEC conducted a survey of actual space occupied. Reeves pf. at Attachment 1, page 1.

3. The Department filed rebuttal testimony by Charles F. Larkin on June 3, 2002 which proposed a rate of \$5.12 per foot for attachment to VEC poles. Larkin pf. at 8.

4. VEC and the Department entered a Stipulation, dated August 15, 2002, which is referred to above, and asked that the Board approve the Stipulation. In the Stipulation, the parties jointly recommend that the Board approve the terms and conditions of an agreed-upon tariff, including the per-foot rates for attachment to VEC poles. The agreed-upon terms and conditions and rates are attached to the Stipulation as Exhibit A; Exhibit A is also attached to this Order as Attachment 1. The Stipulation proposes the Board approve a rate of \$5.81 per foot for attachment to VEC poles. Stipulation, ¶¶ 1, 5, and 6 and Exhibit A.

5. The Stipulation and proposed tariff also adopt the occupied space presumptions contained in the Board's Rule of one foot for cable operators not providing local exchange service and two feet for all other attaching entities except ILECs and electric utilities, and retains VEC's ability to rebut the presumptions based on a survey of actual space occupied by an attaching entity. Stipulation at ¶¶ 2 and 3 and Exhibit A, page 10; Larkin pf. at 3.

6. The stipulated per-foot rate is just and reasonable and represents a compromise among the rate levels proposed by VEC and the Department. By settling this matter, the parties have avoided the uncertainty, delay, and significant costs of further litigation. Stipulation at ¶ 7.

7. The Stipulation provides that within 30 days after entry of a final Board order approving the Stipulation, VEC shall file with the Board a compliance tariff consistent with Exhibit A to the Stipulation. Stipulation at ¶ 8.

8. The Stipulation also provides that VEC shall implement the agreed-upon rates in its next bills following the Board's final order approving the Stipulation. As part of the implementation, VEC is altering its billing procedure from billing in arrears to billing in advance. Accordingly, it will be necessary for VEC to issue bills covering two billing periods on January 1, 2003. VEC will bill in arrears for attachments in place during the period January 1, 2002, through December 31, 2002, based on the number of pole-attachment permits issued as of December 31, 2002. Charges for permits issued during the 2002 calendar year will be adjusted based on the month of issuance. VEC will also bill in advance for the period January 1, 2003, through December 31, 2003, based on the number of permits issued as of December 31, 2002. All charges for attachment beginning January 1, 2002, will be calculated based on the per-foot rates agreed to in this Stipulation. Stipulation at ¶ 9.

9. The Stipulation further provides that if it is not adopted by the Board in its entirety, then the agreements therein shall terminate and the parties shall have the right to advance positions going forward different from those reflected in the agreements set forth in the Stipulation. Stipulation at ¶ 10.

10. Provided that the Hearing Officer issues a Proposal for Decision consistent in all respects with the Stipulation and the proposed tariff attached to the Stipulation as Exhibit A, then the parties waive their rights under 3 V.S.A. § 811 to file written comments or present oral argument on any such proposal for decision. Stipulation at ¶ 11.

11. VEC and the Department agree that the Board should approve the Stipulation and VEC's pole attachment tariff as reflected in Exhibit A to the Stipulation and that upon such approval, this Docket should be closed. Stipulation at ¶ 12.

V. DISCUSSION AND CONCLUSIONS

The Board opened this investigation into VEC's proposed pole attachment tariff pursuant to 30 V.S.A. Sections 225 and 227. The standard for review of rates under these sections is whether the rates are just and reasonable. VEC's pole rental rates must also be consistent with the Board's Pole Attachment Rule, including Rule 3.706. All other terms and conditions of the proposed tariff must be just and reasonable pursuant to PSBR 3.703. VEC and the Department

agree that the per-foot rental rate of \$5.81 embodied in the Stipulation results in a reasonable determination of VEC's annual per-foot rental rates and annual rental rates that are just and reasonable. VEC and the Department have also negotiated and agreed upon additional terms and conditions for attachment to VEC's poles and agree that these terms and conditions are also just and reasonable.

I have reviewed the Stipulation and the evidence provided in support of it. Based on my review, I concur with the parties' position that the per-foot pole rental rates presented in the Stipulation are just and reasonable in accordance with Rule 3.706. There was no disagreement among the parties concerning the issues of space occupied by attachment, as VEC adopted the presumptions contained in Rule 3.706(D). Additionally, no other party or interested person has objected to the Stipulation.

In concluding that the tariff as embodied in Exhibit A to the Stipulation contains terms that are just and reasonable, and therefore consistent with Rule 3.700, including the per-foot attachment rate, I rely in part upon the expertise and judgment of the Department's staff, and their depth of knowledge about VEC's accounting data and pole rental rate justifications. The Department reviewed VEC's accounts applicable to the pole rental rate calculation as well as the other terms and conditions of the tariff. Additionally, Department staff has been very involved in the development of the recently amended Rule 3.700 and are familiar with the underlying policy considerations that resulted in the new Rule. I have also relied upon the prefiled testimony and accompanying support of all parties. Based upon the foregoing, I recommend that the Board adopt the substance of the parties' agreement as embodied in the Stipulation and its attached Exhibit A and that this Docket be closed.

All parties to this proceeding have waived the opportunity to file exceptions and briefs and present oral argument on this Proposal for Decision in accordance with the provisions of 3 V.S.A. § 811, in the event that this Proposal is substantially in the form proposed by the parties. This proposal is consistent with, and adopts the substance of, the parties' proposal.

DATED at Montpelier, Vermont, this 9th day of October, 2002.

s/John P. Bentley
John P. Bentley, Esq.
Hearing Officer

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and recommendations of the Hearing Officer are adopted, and his recommendations and conclusions are affirmed.
2. The Stipulation between VEC and the Department dated August 15, 2002, is approved.
3. VEC shall file a revised tariff incorporating the rates, terms, and conditions contained in the Stipulation and attached Exhibit A within 30 days from the date of this Order.
4. VEC shall implement the new billing procedures as prescribed in the Stipulation.
5. In all other respects, the parties shall comply with the terms and conditions of the Stipulation.

Dated at Montpelier, Vermont, this 9th day of October, 2002.

_____)	
)	PUBLIC SERVICE
)	
s/David C. Coen)	BOARD
)	
)	OF VERMONT
s/John D. Burke)	

OFFICE OF THE CLERK

FILED: October 9, 2002

ATTEST: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.